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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 278

ARTHUR C. AMOS,

Petitioner,

vs.

THE PULLMAN COMPANY,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF RESPONDENT IN OPPOSITION

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JOHN M. LYNHAM.

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Question Presented

In respondent's view, the question presented here is whether the Federal Employers' Liability Act applies to all workers employed in interstate commerce, regardless of the nature of their employer's business, or only to employees of common carriers by railroad.

Counter-Statement of the Case

Petitioner sued respondent in the District Court under the Federal Employers' Liability Act, alleging that he was employed by respondent in its shop in the District of

Columbia as an electrical repairman and that, while he was using a sledge on a truck frame of a Pullman car, a sliver entered his left eye (Appellant's App. 1).

Respondent filed a motion for summary judgment on the ground that the Act by its terms applies only to common carriers by railroad and, inasmuch as respondent is not a common carrier by railroad, it is not subject to the Act (Appellant's App. 4). In support of the motion respondent filed an affidavit of its Vice President H. S. Anderson setting forth, inter alia, that The Pullman Company is not a common carrier by railroad, does not own or lease any railroad track or line of railroad, and has never owned any such track or line; that it neither owns nor operates any locomotives or engines and neither prepares nor publishes timetables or train schedules, but on the contrary is engaged exclusively in the business of furnishing parlor car and sleeping car accommodations and service to the railroads with which it has service contracts (Appellant's App. 6).

This affidavit was not contradicted by petitioner.

After argument upon the motion District Judge Tamm entered summary judgment for respondent without opinion (Appellant's App. 8).

The United States Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court on the ground that by its terms the Act is applicable to "Every common carrier by railroad . . .", that respondent's uncontroverted affidavit established that respondent is not a common carrier by railroad, and that therefore there was no genuine issue of material fact as to whether petitioner was subject to the Act.

Argument

Sections 1 and 2 of the Act (35 Stat. 65, as amended, 53 Stat. 1404, 45 U.S.C. Sections 51, 52) impose liability on "Every common carrier by railroad. . . ." Petitioner does not here contend that respondent is a common carrier by railroad. Rather, his contention is that every worker engaged in interstate commerce either is or should be covered by the Act, regardless of whether or not his employer is a common carrier by railroad (Petition, Pages 3, 8). He now argues that this case is controlled by *Southern Pacific Company* v. *Gileo*, — U.S. —, 100 L. Ed. 821, and *Reed* v. *Pennsylvania Railroad Company*,—U.S. —, 100 L. Ed. 828, which were decided by this Court on June 11, 1956. However, in both of these cases it was undisputed that the employers were interstate common carriers by railroad and the sole question was whether the 1939 amendment to Section 1 of the Act was broad enough to include employees not directly engaged in interstate transportation. Therefore, neither of these cases has any bearing on the case at bar for neither is any authority for the proposition that the Act applies to employees other than those of common carriers by railroad.

The Courts have consistently held that the Act applies only to common carriers by railroad (*Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 187, 41 S. Ct. 93, 65 L. Ed. 205; *Second Employers' Liability Cases*, 223 U.S. 1, 52, 32 S. Ct. 169, 56 L. Ed. 327; *Erie R. Co.* v. *Jacobus*, 221 F. 335; *Tilson* v. *Ford Motor Company*, 130 F. Supp. 676, 677; *Kelly* v. *Delaware River Joint Commission*, 85 F. Supp. 15; *Higgins* v. *Erie R. Co.*, 89 N.J.L. 629, 99 Atl. 98), and that The Pullman Company is not subject to the Act (*Taylor* v. *New York Cent. R. Co.*, 294 N.Y. 397, 62 N.E. 2d 777, 780, cert. den. 326 U.S. 786). Cf. *Robinson* v.

Baltimore & Ohio Railroad Company, 237 U.S. 84, 35 S. Ct. 491, 59 L. Ed. 849.

The 1939 amendment to Section 1 made no change in the class of employers subject to the Act and therefore the *Wells Fargo* case must be deemed to have had legislative approval (*Latsko* v. *National Carloading Corp.*, 192 F. 2d 905, 909). More important than this, however, is the fact that the legislative history of the amendment shows that the Congress specifically declined to bring sleeping car companies within the Act [S. Rep. No. 661, 76th Cong. First Session, page 2, (1939)].

What petitioner really seeks is an amendment to the Act by judicial fiat.

Conclusion

It is respectfully submitted that certiorari should be denied.

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